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Counsel for the USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
  
Debtor.

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
  
Debtor.

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
  
Debtor.

In re:  
USA SECURITIES, LLC,  
  
Debtor.

Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

JOINTLY ADMINISTERED  
Chapter 11 Cases

Judge Linda B. Riegler

**STATUS REPORT**

This status report is filed by counsel for the USACM Liquidating Trust (the "USACM Trust") in response to several issues raised by the Court during the status hearings held on July 26, 2011 in Adversary 08-1119 and Adversary 08-1124 (the "Status Hearings").

1 **Adversary No. 08-01119 – USACM Liquidating Trust v. Russell**

2 During the Status Hearings, the Court raised the issue that the Stipulated Judgment signed  
3 by the Court on July 14, 2011 [Docket No. 78] in this matter was only entered against Defendant  
4 Robert A. Russell and did not address the other defendants.

5 Under the terms of the Settlement Agreement approved by the Court on October 8, 2009  
6 [Docket No. 7586], Defendant Robert A. Russell executed a promissory note in favor of the  
7 USACM Trust in the original principal amount of \$20,000.00 on June 9, 2009. Payment of the  
8 promissory note was due in full by June 20, 2011. In the event of default, the USACM Trust was  
9 authorized to obtain entry of the Stipulated Judgment executed by Robert A. Russell. Under the  
10 terms of the Settlement Agreement, the Stipulated Judgment would only be against Robert A.  
11 Russell.

12 Specifically the Settlement Agreement states:

13  
14 In conjunction with the execution of the Promissory Note, Robert A. Russell shall also  
15 consent to a stipulation of judgment (in the form attached hereto as Exhibit B) against  
16 Robert A. Russell in the amount of \$25,000 in favor the USACM Trust (“Stipulation of  
17 Judgment”).

18 In conjunction with the execution of the Promissory Note, Robert A. Russell shall also  
19 consent to a stipulation of judgment against Robert A. Russell in the amount of \$25,000 in  
20 favor the USACM Trust (“Stipulation of Judgment”). Counsel for the USACM Trust, the  
21 law firm of Diamond McCarthy, LLP shall hold the Stipulation of Judgment without filing  
22 it.

23 If the Promissory Note is paid in full within 2 years of its execution, Counsel for the  
24 USACM Trust shall return the Stipulation of Judgment to counsel for Robert A. Russell,  
25 Scott McGath. If the Promissory Note is not paid in full within 2 years of its execution,  
26 the Stipulation of Judgment shall be filed and execution shall issue upon the Judgment.

27 Additionally the USACM Trust’s 9019 Motion to approve the Settlement Agreement  
28 stated:

29 On or before the Effective Date of this Agreement, Robert A. Russell shall execute a  
30 promissory note payable to the USACM Trust in the amount of \$20,000 (the “Promissory  
31 Note”). The Promissory Note shall be a two-year, non-interest-bearing note. Robert A.  
32 Russell shall be the only obligor on the Promissory Note.

1 In conjunction with the execution of the Promissory Note, Robert A. Russell shall also  
 2 consent to a stipulation of judgment against Robert A. Russell in the amount of \$25,000 in  
 3 favor the USACM Trust ("Stipulation of Judgment"). Counsel for the USACM Trust, the  
 4 law firm of Diamond McCarthy, LLP, shall hold the Stipulation of Judgment without  
 filing it.

5 If the Promissory Note is paid in full within 2 years of its execution, Counsel for the  
 6 USACM Trust shall return the Stipulation of Judgment to counsel for Robert A. Russell,  
 7 Scott McGath. If the Promissory Note is not paid in full within 2 years of its execution,  
 the Stipulation of Judgment shall be filed and execution shall issue upon the Judgment.

8 Defendant Robert A. Russell defaulted on the terms of the Settlement Agreement and the  
 9 Promissory Note; therefore, on July 13, 2011, the USACM Trust filed the Declaration of Jacob J.  
 10 Roberts and uploaded the Stipulated Judgment for entry by the Court.

11 Under the terms of the Settlement Agreement, counsel for the USACM Trust intends to  
 12 file a Stipulated Dismissal for Deborah Russell, Russell AD Development Group, LLC, Copper  
 13 Sage Commerce Center LLC, Freeway 101 USA Investors, LLC, Boise/Gowen 93, LLC, Der NV  
 14 Invesco, LLC, FW 101 Loop RAR Investment, LLC, BG/93 Investments, LLC, and SVRB  
 15 Investments, LLC.

16 **Adversary No. 08-1124 – USACM Liquidating Trust v. Homes for America**

17 During the Status Hearings, the Court stated that the Agreed Judgment approved by the  
 18 Court on June 30, 2011 [Docket No. 54] related to all but one of the named Defendants, One  
 19 Point Street, Inc. ("One Point Street") and inquired as to the status of proceeding against One  
 20 Point Street.

21 Under the terms of the Settlement Agreement approved by the Court on September 15,  
 22 2009 [Docket No. 7485], One Point Street was specifically excluded from the \$2.8 million  
 23 Agreed Judgment.

24 Specifically the Settlement Agreement states:

25 Defendants HFAH, Clear Lake, and Mediterranean (collectively the "Responsible  
 26 Defendants") shall deliver to the USACM Trust a fully executed Agreed Judgment in the  
 amount of Two Million Eight Hundred Thousand Dollars (\$2,800,000) substantially in the

1 form as that attached hereto as Exhibit A, (the "Agreed Judgment"). Defendant OPSI  
2 shall have no liability to USACM Trust.

3 Additionally the USACM Trust's 9019 Motion to approve the Settlement Agreement  
4 stated:

5 The Responsible Defendants<sup>2</sup> will execute Agreed Judgments in a joint and several  
6 amount of \$2,800,000.00 (the "Agreed Judgments") which will be held in escrow as  
7 described below.

8 Under the terms of the Settlement Agreement, counsel for the USACM Trust intends to  
9 file a Stipulated Dismissal of One Point Street from this adversary.

10 Dated: August 4, 2011

11 **DIAMOND MCCARTHY LLP**

**LEWIS AND ROCA LLP**

12 By: /s/ Stephen T. Loden  
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*Counsel for USACM Liquidating Trust*

19 <sup>2</sup> The Responsible Defendants are HFAH, Clear Lake, and Mediterranean.  
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26

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was electronically filed on August 4, 2011, and served by the Court's CM/ECF service to all parties registered to receive electronic notice in this case.

/s/ Jacob J. Roberts